

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAVID D. WILBON, et al.,)
)
Plaintiffs,)
)
vs.) No. 12 C 1132
)
JOSEPH M. PLOVANICH, et al.,) Chicago, Illinois
) September 1, 2017
Defendants.) 1:41 P.M.

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE M. DAVID WEISMAN, Magistrate Judge

APPEARANCES:

For the Plaintiffs: LAW OFFICES OF IRENE K. DYM KAR
53 West Jackson Boulevard
Suite 733
Chicago, Illinois 60604
BY: MS. IRENE K. DYM KAR
MR. DANIEL HEINZ REGENSCHEIT
MS. SHAMOYITA MUNNA DasGUPTA

For the Defendants: CITY OF CHICAGO, DEPARTMENT OF LAW
30 North LaSalle Street
Suite 900
Chicago, Illinois 60602
BY: MS. KRISTIN M. PINKSTON
MS. DANA MARIE O'MALLEY.
MS. ALLISON LYNN ROMELFANGER

PAMELA S. WARREN, CSR, RPR
Official Court Reporter
219 South Dearborn Street
Room 2342
Chicago, Illinois 60604
(312) 408-5100

1 (Proceedings had in open court.)

2 THE COURT: 12 C 1132, Wilbon versus Plovanich and
3 others.

4 And everyone want to go around and identify
5 themselves.

6 MS. PINKSTON: Kristin Pinkston on behalf of
7 defendants.

8 MS. O'MALLEY: Dana O'Malley on behalf of defendants.

9 MS. ROMELFANGER: Allison Romelfanger on behalf of
10 defendants.

11 MS. DYM KAR: Irene Dymkar for plaintiffs.

12 MR. REGENSCHEIT: Daniel Regenscheit for the
13 plaintiffs.

14 MS. DasGUPTA: Shamoyita DasGupta for the plaintiffs.

15 THE COURT: And is your last name DasGupta?

16 MS. DasGUPTA: Yes.

17 THE COURT: Okay. Thanks.

18 All right. So I want to go over a couple of the
19 motions that were filed since we were last together. I have a
20 couple of questions, and I want to discuss the Zone 12 issue.

21 That's all I plan to get done today, correct? We'll
22 have our pretrial conference later.

23 MS. PINKSTON: Right.

24 THE COURT: Is there anything else on anyone's list?

25 Ms. Dymkar?

1 MS. DYM KAR: I thought that there might be a ruling on
2 the show-up, but I don't know if that's today.

3 THE COURT: Oh. Maybe. We'll see. Maybe not. I'll
4 see.

5 You may need that though for your --

6 MS. PINKSTON: That's correct.

7 THE COURT: Okay.

8 MS. PINKSTON: So obviously nothing is going to happen
9 over the weekend. But if we could have that ruling sooner
10 rather than later for the video editing.

11 THE COURT: Thank you, and I apologize.

12 All right. Let me first start asking questions, and
13 then we'll go through the filed motions, and then we'll talk
14 about the Zone 12.

15 So I have been looking more closely at plaintiff
16 Smith's claims. So you were -- what claims are still -- are
17 you still proceeding on as to plaintiff Smith?

18 MS. DYM KAR: False arrest, illegal search, malicious
19 prosecution. And then I'm not sure if you could consider the
20 supervisory liability claim or not. And that might be it. I
21 don't have my chart, but I think that might be it.

22 THE COURT: Okay. And that would just be Lieutenant
23 McDermott, correct?

24 MS. DYM KAR: For the supervisory liability?

25 THE COURT: Correct.

1 MS. DYM KAR: Yes. And different courts handle that
2 differently when they come to trial.

3 THE COURT: All right. So the false arrest claim is
4 for what, the mob action or for the marijuana?

5 MS. DYM KAR: For the mob action.

6 THE COURT: Okay. So if you are not pursuing a false
7 arrest -- well, let me ask the second question. When is the
8 marijuana found based on the facts as you understand them?

9 MS. DYM KAR: I don't know exact time.

10 THE COURT: Not time, but in sequence of events.

11 MS. DYM KAR: They are stopped, taken out of the car,
12 put on their knees, and then at some time after that the
13 marijuana is found.

14 THE COURT: In the car?

15 MS. DYM KAR: Yes.

16 THE COURT: Okay.

17 MS. DYM KAR: Under the driver's seat.

18 THE COURT: So here's what I'm trying to understand.
19 If you're not pursuing anything based on the marijuana, it
20 would seem to me that plaintiff Smith's claim is limited from
21 the time he was stopped till the time the marijuana was found.

22 MS. DYM KAR: I think that's the way we had to look at
23 it given how -- the facts unfolded, yes.

24 THE COURT: Okay. And then as to the malicious
25 prosecution claim, you're continuing to proceed on that as to

1 the mob action, correct?

2 MS. DYM KAR: Right.

3 THE COURT: How is that distinguishable from the
4 marijuana prosecution? I know -- tell me how those are
5 distinguished.

6 MS. DYM KAR: Well, that Holmes versus --

7 THE COURT: Village of?

8 MS. DYM KAR: -- Hoffman Estates --

9 THE COURT: Uh-huh.

10 MS. DYM KAR: -- that says that you have a separate
11 claim for each criminal charge brought against you because of
12 something that hung over your head for the time and gave you
13 some exposure to jail time or penalties.

14 There is a different definition for probable cause for
15 malicious prosecution. And each criminal charge is subject to
16 its own claim of malicious prosecution.

17 THE COURT: Okay. From a damage standpoint, how long
18 did Mr. Smith have to go to court on the marijuana charge?

19 MS. DYM KAR: It was either once or twice he went to
20 court. I mean, both charges. They were dismissed on the same
21 day.

22 THE COURT: So that's what I am trying to understand.
23 If -- I understand that there are separate viable claims for
24 malicious prosecution for each charge. But is it -- from a
25 damage component his damages are so intertwined, how can we

1 tease out the marijuana charge? If you're going to argue to
2 the jury he had to go to court twice on the mob action, because
3 wouldn't he have to have gone twice on the marijuana charge?
4 Sounds like you're telling me he did.

5 MS. DYM KAR: He did. But that's not the only thing
6 you look at. I mean, I think the Holmes case indicates that
7 you have to be concerned about criminal prosecution for each
8 charge.

9 And the mob action charge was far -- far more serious
10 than the cannabis charge, and the way it looks on your record
11 is far more serious than a cannabis charge. And I noted that,
12 you know, if he were stopped today, he would be given a ticket.
13 I wasn't -- it is not even criminal. It has been
14 decriminalized, at least in the City of Chicago.

15 So it is the mob action that caused him more of a
16 problem and more explanation to have to make to other people
17 having that on his record.

18 THE COURT: So I agree with you -- the thought you're
19 having, which is there are two separate things you need to be
20 looking at. But from the defendants's standpoint, as far as
21 damages go, how can you tease out the marijuana charge as a
22 damage component? Because, yes, he -- you know, the law says
23 we have to look at each of these individually. But your damage
24 claim would be he had to go to court twice. And isn't it valid
25 for the city to say, he would have had to have gone twice for

1 the marijuana case?

2 MS. DYM KAR: But going to court isn't the only aspect
3 of the damages.

4 THE COURT: Correct. And he -- and whatever other
5 things you had to say, he had to worry about this, all the
6 things that go with the malicious prosecution claim. He had
7 the same for the marijuana. And you're asking -- you're asking
8 to remove any reference to that, and I'm trying to understand
9 how under 403 that is appropriate.

10 MS. DYM KAR: I think that the fact that he went to
11 court on the cannabis charge doesn't mean that he wasn't also
12 going to court and being prosecuted for the mob action case.

13 THE COURT: Precisely.

14 MS. DYM KAR: And --

15 THE COURT: And vice versa.

16 MS. DYM KAR: And there was very likely, given how
17 these things are handled in criminal court or were handled,
18 that the marijuana charge was going to be dismissed the first
19 time he went there.

20 THE COURT: But it wasn't, right? It was dismissed on
21 the same day as the mob action?

22 MS. DYM KAR: Right. And it was -- it was either the
23 first or second time he went to court that it was dismissed.

24 I don't think that that was his concern, it was the
25 mob action because it was the police making allegations that he

1 was part of a very violent disturbance that caused -- you know,
2 was dangerous to people. And, of course, the allegation was it
3 was dangerous to the police also.

4 Holmes says they are separable. I mean, that's --

5 THE COURT: That's a -- I think Holmes -- I agree with
6 you, but I think Holmes stands -- similarly stands for the
7 proposition that the fact that there is a marijuana prosecution
8 over him as well is relevant. That's what I am trying to
9 understand.

10 It is like you're trying to say, I don't want it out
11 there because the city is going to dirty him up with it, which
12 we can talk about that separately. But as far as the charge
13 itself, Holmes says these are separate charges. We need to
14 look at them separately. And from a 403 standpoint, for
15 damages alone, I'm not sure how you can say, forget the
16 marijuana case was ever out there.

17 I'm not saying that they can have free rein with what
18 they want to do with it. But if you are going to stand up in
19 front of the jury and say, he had to go to court twice and he
20 was -- you know, he was very worried about this prosecution for
21 mob action, which I understand you'll say, shouldn't the city
22 be able to say, aren't you worried about the -- weren't you
23 worried about the marijuana charge, and weren't you concerned
24 that -- I mean, didn't you have to go to court for the
25 marijuana charge as well?

1 And you're not bringing a claim on the marijuana
2 charge, are you?

3 MS. DYM KAR: No.

4 THE COURT: All right. So I'm not going to -- I'm not
5 going to exclude any reference to the marijuana charge.

6 Now what can the city do with it is a little
7 different. To me the city is limited to using that marijuana
8 charge simply to state as a fact he was charged with it and it
9 was resolved in his favor.

10 Right, it was resolved in your client's favor,
11 correct?

12 MS. DYM KAR: That's right.

13 MS. PINKSTON: Your Honor, that's not correct, it was
14 SOL'd.

15 THE COURT: All right. What was the mob action?

16 MS. PINKSTON: Also SOL'd. And that's part of our
17 argument with regard to the malicious prosecution claim is that
18 as far as the testimony and the certified conviction or
19 statement of disposition conviction, there is no --

20 THE COURT: There is no evidence that --

21 MS. PINKSTON: -- objective -- exactly. Objective
22 evidence that it is probative of his innocence, and so that is
23 going to be an issue at trial in terms of that element of
24 malicious prosecution.

25 THE COURT: And planning on calling the prosecutor to

1 address that issue, correct?

2 MS. DYM KAR: I'm not sure if we're calling the
3 prosecutor.

4 THE COURT: Okay.

5 MS. DYM KAR: We could rely on the court papers. We
6 can rely on what my client has to say.

7 We're also in contact with his attorney.

8 THE COURT: But I thought the case law was pretty firm
9 that an SOL is not indicative of innocence on its own.

10 MS. DYM KAR: There is state law that says -- well,
11 state law that came about because there was a concern as to
12 when statute of limitations started running on an SOL, since it
13 is a construct in circuit court that doesn't exist anywhere in
14 the books.

15 And so what the Court said in -- is another issue.
16 But in that issue said that you have to wait out the speedy
17 trial time, and that's when the -- when the actual dismissal by
18 operation of law, even though no one came back to court,
19 nothing ever happened, by operation of law, at that point
20 that's when you could bring the malicious prosecution claim.

21 So there is case law that says indirectly that, yes,
22 you know, you can bring a malicious prosecution case at that
23 point. And I think that an SOL is a favorable termination,
24 which is how we -- we would describe that element. They're
25 going to describe it indicative of innocence. But there really

1 is no dismissal that's indicative of innocence. You're found
2 not guilty after trial, that's not indicative of losing, and
3 you --

4 THE COURT: No, that is because you're presumed
5 innocent, and so that -- well, I think the law says not guilty
6 at trial is indicative of innocence.

7 I think SOL can be indicative of innocence if there is
8 other extrinsic evidence explaining why it is indicative of
9 innocence.

10 MS. DYM KAR: I think the analysis has to be the same
11 as for a nolle pros. And in that situation --

12 THE COURT: Well, we're just getting a little bit far
13 afield. So we're talking about the marijuana and what we can
14 use with the marijuana charge.

15 Ms. Pinkston is saying SOL is not indicative of
16 innocence. That got us down a little rabbit trail.

17 I'm talking about how the marijuana charge can be
18 used. And I'm saying the city cannot use it or the defendants
19 cannot use it to, in your terms -- and I don't know if you used
20 this exact vernacular -- but to dirty up the plaintiff. It can
21 be used to say this charge was brought against you and this
22 charge was pending and this charge was SOL'd at the same time
23 as a mob action. And you don't have a complaint
24 about -- you're not complaining about the marijuana charge.
25 That's how it can be used.

1 But it cannot -- to your point it cannot be used to
2 dirty up the plaintiff. You know, any -- it is just a
3 statement of fact as to these charges.

4 Does everyone -- I'm not going to ask if everyone is
5 good with that. Does everyone understand my ruling on that?

6 MS. PINKSTON: One moment, your Honor.

7 (Discussion off the record.)

8 MS. PINKSTON: Your Honor, we would like to be able to
9 ask one further question of Mr. Smith with regard to the
10 marijuana, the cannabis, and that is that he does not dispute
11 that he did have possession of it.

12 So I understand no claim with regard to the marijuana
13 charge. But we do want to go a step further in terms of the
14 possession of it because he does still have the unlawful search
15 claim. And so a search pursuant to unlawful arrest --

16 THE COURT: That's what -- okay. That's why I was
17 asking about when this unlawful search of plaintiff -- as to
18 plaintiff Smith is alleging when that occurred.

19 MS. PINKSTON: It is a disputed fact.

20 THE COURT: All right. So, Ms. Dymkar, your client is
21 saying the search of him and the search that he finds violative
22 occurred prior to the search of the vehicle.

23 MS. DYM KAR: Right.

24 THE COURT: And so the -- any search incident to
25 arrest had already happened of his person, and then they found

1 the marijuana.

2 MS. DYM KAR: I believe so. I believe that's how it
3 unfolded.

4 THE COURT: Okay. Because that's important.
5 Otherwise, if it is the converse, if they stop the car,
6 conducted an automobile search incident to the stop and then
7 found the marijuana, the claim of the unlawful search incident
8 to arrest would be answered by finding the marijuana.

9 Do you understand that logic?

10 MS. DYM KAR: I understand what you are saying.

11 THE COURT: Okay.

12 MS. DYM KAR: The sequence becomes very important.

13 THE COURT: Yeah. Can we figure out that sequence now
14 based on the plaintiffs's testimony? Because we have got to
15 have some conflicting -- or I don't -- we don't have to have
16 conflicting, but we have to have some semblance to say the
17 search of the vehicle occurred after the search of his person.
18 Because that, Ms. Dymkar, is what your client is complaining
19 about, correct?

20 MS. DYM KAR: Right.

21 THE COURT: All right.

22 MS. DYM KAR: Is that something we could report back to
23 you or -- I don't have the transcripts with --

24 THE COURT: Yeah. Sure.

25 MS. PINKSTON: So, your Honor, would you like us just

1 to send something to your proposed in-box with the citations?

2 THE COURT: Yeah, just a brief statement from both
3 sides. If there is a conflict of testimony, that's fine. You
4 know, we'll deal with that.

5 But if -- if Mr. Smith is saying they searched the
6 vehicle, they found the marijuana, and then they searched me
7 incident to the arrest, and I found that problematic, there is
8 a -- that is analytically a very different claim.

9 MS. DYM KAR: I understand, your Honor --

10 THE COURT: Okay.

11 MS. DYM KAR: -- perfectly. And I am hesitant to speak
12 without having --

13 THE COURT: I appreciate that.

14 MS. DYM KAR: -- that right in front of me.

15 THE COURT: That's fine.

16 MS. DYM KAR: I guess the other issue with the cannabis
17 is when the lab report comes in, whether they describe it as --
18 whether it is -- somehow comes across as just volume, a large
19 volume of cannabis. I mean, I did bring a picture with me so
20 the Court would get an idea of what we're talking about here.

21 THE COURT: I have seen a lot of these pictures. They
22 all look the same.

23 That's fine. So I --

24 MS. PINKSTON: I addressed it in my motion -- in my
25 response.

1 THE COURT: Yeah. And knowing now, Ms. Dymkar, that
2 it was -- they may use it for the purpose I just said, you may
3 decide to front it on, you know, direct and say, you did have
4 this small baggie of pot. You know, that -- you can handle it
5 that way.

6 I'm simply saying you cannot excise that fact from
7 this case if you're pursuing your malicious prosecution claim
8 and say having the burden of a prosecution over him is a source
9 of damages, which I'm not saying it can't be, but it
10 is -- there is a balance here because he also had -- he had
11 that same fear of prosecution for the mob action. It may have
12 been greater. He may be able to explain on the stand why it is
13 more significant to him. But he also had that same fear, maybe
14 of a lesser amount, as to the marijuana charge.

15 It is -- I just think there -- it is relevant, and
16 there is no -- it would be unfair to the city not to allow them
17 to inquire. But they cannot dirty him up about it.

18 MS. DYM KAR: Understood.

19 MS. PINKSTON: Your Honor, may I make --

20 THE COURT: Yes.

21 MS. PINKSTON: Ask for two points of clarification?

22 THE COURT: Sure. Go ahead, and then we have got to
23 take a break.

24 MS. PINKSTON: All right. The first one is for the
25 brief statement of chronology with the citations to your

1 proposed in-box. Do you want one from each side or do you want
2 a joint?

3 THE COURT: No, one from each side.

4 MS. PINKSTON: Okay. And then the second issue then
5 that my thought process was in this discussion is in terms of
6 his explanation, I understand what you are saying about
7 Ms. Dymkar being able to front the issue with the marijuana.
8 However, my concern then is, I think, that any argument that
9 today this would be a ticketable offense and not an arrestable
10 offense would be improper as that was not the law then.

11 THE COURT: It -- well, there is a couple problems
12 with that. There is a couple problems with that. One is
13 foundation. I don't know that Mr. Smith would be the proper
14 witness to even put that in.

15 And, second of all, I tend to agree that as to how
16 Mr. Smith perceived that issue then has to be based on what the
17 law was then. I don't understand -- I think there is a
18 relevance issue and a potential jury confusion to say now this
19 wouldn't be a big deal, but back in 2010 -- right, that's when
20 we were --

21 MS. PINKSTON: Correct, your Honor.

22 THE COURT: -- in 2010 it was a bigger deal. So
23 I tend to agree with the city on that. Is there something I'm
24 missing, Ms. Dymkar?

25 MS. DYM KAR: I don't think George Smith can talk about

1 what the law is now and what it was then. And I don't even
2 know that he knows that it is -- we all know or attorneys who
3 practice in this area know that these charges were just
4 dismissed outright because nobody was going to prosecute
5 somebody on a nickel bag of weed. And so it was -- but, you
6 know, so -- I'm not sure. I'm not sure how to handle that or
7 what -- you know, what shape the testimony should take. But it
8 wasn't anything he was concerned about.

9 THE COURT: He can certainly testify to that if that's
10 the case. That, of course, is a double-edged sword for the
11 jury to hear as well.

12 MS. DYM KAR: Yes, that's true.

13 THE COURT: All right. I have got to take a break. I
14 apologize. I'll be right back.

15 MS. PINKSTON: Yes, your Honor.

16 THE COURT: If you guys want to go grab something,
17 feel free.

18 (Brief recess.)

19 THE COURT: All right. We're back on the record. I
20 apologize for the interruption.

21 Have we closed out the discussion on the marijuana
22 issue?

23 MS. PINKSTON: I believe so. We just need to send the
24 citations with the chronology of the search.

25 THE COURT: All right. That -- yeah.

1 All right. One other thing before we get to the
2 motions and the Zone 12 tape.

3 We're looking at the pretrial order. We're a bit
4 confused on the scope issue, as far as scope of employment.
5 There is no stipulations listed in the pretrial order. But the
6 city -- and I don't know if the individual defendants -- but
7 the city is saying there is no question that these officers
8 were in the scope of employment. And the -- you know, the
9 plaintiffs are proceeding as if that is an issue at play, which
10 I understand why they would because there is no stipulation
11 that the officers were in the scope of employment.

12 And we're just trying to figure out why that isn't
13 being stipulated to, because that would answer a lot of the
14 disputes on certain jury instructions and other issues. I
15 don't know that there is a lot of relevant evidentiary issues,
16 but that would streamline the jury decision-making process
17 somewhat if the issue is simply, you know, whether the
18 officers's conduct was lawful or not.

19 MS. PINKSTON: Certainly, your Honor. I believe their
20 answer to the complaint, the city's answer as well, admitted
21 that they were acting within the scope of employment under
22 color of law.

23 THE COURT: Right. So from a trial standpoint --
24 that's what -- I don't think anyone is disputing that.

25 From a trial standpoint, a stipulation though is there

1 for the jury -- for whatever purpose it may be relevant, the
2 jury knows that fact.

3 MS. PINKSTON: We can stipulate to that.

4 THE COURT: Okay. All right. There is one other
5 thing I was thinking about.

6 MS. PINKSTON: With the pretrial order, your Honor?

7 THE COURT: Yeah, there is a couple things in the
8 pretrial order that we'll get to when we review that. But
9 there is one other issue that I was thinking we could get
10 resolved today that made sense to me.

11 Maybe we'll come back. We'll see.

12 MS. PINKSTON: I will say the defendants inadvertently
13 failed to include a verdict form with their jury instructions.

14 THE COURT: Okay.

15 MS. PINKSTON: I --

16 MS. O'MALLEY: We're evaluating plaintiffs's. So to
17 the extent we'll agree to it, we'll advise the Court before the
18 pretrial conference. We just need to look at one more thing
19 and get the approval of our deputy, so --

20 THE COURT: Okay.

21 MS. O'MALLEY: But we're hoping to be able to reach
22 agreement on that before the pretrial.

23 THE COURT: Okay. All right. So next I have got the
24 plaintiffs's motion in limine, defendants's testimony regarding
25 their knowledge of the 1300 North Menard event.

1 And then defendants's response to that.

2 And I think a lot of that plays in to the issue of
3 Zone 12 recordings themselves. So I kind of want to talk
4 through those issues, as well as the punitive damage issue.
5 But we'll get to that next.

6 All right. So plaintiffs's motion in limine, this is
7 436, seeks to preclude defendants from testifying beyond their
8 deposition testimony regarding any details about the incident
9 on 1300 Menard.

10 I am not aware of any case law or rule of evidence
11 that would say that a witness cannot testify about events
12 beyond what they testified to at a deposition. So that general
13 proposition is going to be denied. And the plaintiffs don't
14 cite to anything to support that.

15 But this gets to what I think is the bigger issue of
16 the Zone 12 recordings, and that is this: As I understand it,
17 the officers, defendant officers said, I can't recall exactly
18 what I heard, but I know I heard radio chatter prior to the
19 incident at hand for this trial, the arrest of the plaintiffs.
20 At the deposition none of the officers -- I think one of the
21 officers said, if you played the tape I might be able to
22 remember right now.

23 The city has correctly stated that you can refresh a
24 witness's recollection at any time.

25 Now these events happened in 2010, the actual events.

1 The depositions happened in 2013. And now we're in 2017. And
2 so it is conceptually possible that the officers's memory could
3 be refreshed as to what they heard with some level of
4 precision. I emphasize conceptually possible.

5 But I'm keeping out the defendant -- what the
6 defendants have asked to put in from the Zone 12 on the basis
7 of 403 because I think there is a great potential for jury
8 confusion as to what each or any of the individual defendant
9 officers knew or -- or recall at the time these events
10 happened. What they heard, more importantly, not what they
11 knew, but what they heard.

12 So they are -- because the number of defendants and
13 their lack of recall today, or at the time of their deposition,
14 more precisely, what they heard, and then the underlying
15 hearsay problem with the recordings themselves because the
16 recordings themselves are hearsay. They're only -- or
17 potentially hearsay. The exception -- I think the obvious
18 exception is state of mind of the defendants or witnesses, what
19 they heard at the time and why they were doing what they were
20 doing.

21 But none of the defendants said, I recall this
22 specific information, and that's what I was acting on. As I
23 understand it, the witnesses are saying or the defendants, I
24 should say, are saying, I know there is this thing going on at
25 1300 Menard, and there is a lot of radio chatter. And if I

1 heard the radio chatter, I might tell you I remember hearing
2 that.

3 That level of kind of ambiguity and generality I don't
4 think is going to help the jury understand why the officers did
5 what they did. There is nothing that's going to -- in what I
6 am saying about playing the tapes, it's going to preclude the
7 defendant officers from saying, there is a lot of radio
8 chatter, I don't remember exactly what was said, anything like
9 that. I knew that something was going on -- but I don't -- I
10 don't -- and I think that testimony is appropriate.

11 What I don't think is appropriate is for the jury to
12 hear a recording that is now seven years old and three years,
13 you know, after the deposition or three years -- the
14 depositions were 2013. They don't remember then, they are not
15 going to now remember seven years later -- and then think,
16 well, the officers may have heard that stuff so they may have
17 known what was going on, when none of those particular things
18 even said the plaintiffs had done something.

19 In fact, the specific radio transmissions that the
20 plaintiffs want in, and I have let in, is one of the defendants
21 saying, was someone hit by a bottle? I think is kind of the
22 general gist of that communication. And so I think the jury
23 will be confused if they hear all of that recording and think
24 that each of the defendants heard that, and at the time they
25 acted, remembered any particular thing in there, because there

1 is no testimony that they did.

2 MS. PINKSTON: May I?

3 THE COURT: Yes, absolutely.

4 MS. PINKSTON: In terms -- are you including
5 specifically defendant Officer Kushiner's testimony in that
6 conclusion as well, your Honor?

7 THE COURT: I thought Kushiner was part of what the
8 plaintiff wanted in and we ruled on already.

9 MS. PINKSTON: I mean, in terms of the audio, that
10 none of the defendant officers were able to recall particulars.
11 Because defendant Officer Kushiner is the person who is one of
12 the original -- I believe, somewhat undisputed, the original
13 officers to approach the vehicles. His testimony is quite
14 specific as to his interaction with the plaintiffs and his
15 knowledge about the radio communication prior to being flagged
16 down by Keith Thorton.

17 And so while I understand your position that the
18 defendants never said this is why I acted in this particular
19 manner, in all fairness, they were never asked why did you act
20 in this particular manner.

21 THE COURT: And they certainly can be asked that. And
22 they can say I recall a radio transmission that said X, Y, and
23 Z, and that -- you know, if that's what their testimony is.

24 Now their deposition -- I don't know how that cross
25 examination will look. And, you know, we can see at trial.

1 And certainly I am not precluding the plaintiff from
2 coming back to say, that type of particular information is
3 nowhere in Zone 12.

4 MS. PINKSTON: Uh-huh.

5 THE COURT: I don't think this would happen, but let
6 me give you an example. If someone -- if a defendant officer
7 said, I remember hearing on the radio that a guy named Wilbon
8 had done X, Y, and Z, and that's why when I saw his name was
9 Wilbon I arrested him because I remember that, you know, I
10 doubt that's going to happen. But certainly if that happened,
11 that would be, you know, state of mind exception to hearsay. I
12 heard this. I'm not saying it is true, but that's why I acted
13 the way I did.

14 And then plaintiff would certainly have a right if
15 they asked me to to say, Judge, we want something to show that
16 there is no testimony -- there is no radio transmission like
17 that.

18 But a general description of, I heard this, I remember
19 this kind of information being conveyed on Zone 12, and that's
20 why I did what I did, is -- will be generally admissible if it
21 is at a general level, subject to plaintiff trying to cross
22 examine on something if it gets too particularized.

23 And I know plaintiff had asked for some particular
24 segments to come in, which I have allowed in because I think
25 they're particularly germane, there is no jury confusion, and

1 they are relevant to the issue at hand, which is probable cause
2 for arrest. So that's how I'm going to handle the whole Zone
3 12 issue.

4 MS. PINKSTON: May I make one objection for the
5 record?

6 THE COURT: Sure.

7 MS. PINKSTON: Just for the record, to the extent that
8 the analysis is based on what they recalled three years later
9 at their deposition, and the determination is what they knew at
10 the time, just the objection that it is prejudicial to keep
11 this out given that it seems as though the determination is a
12 recollection examination versus what they actually in fact
13 heard over the zone radio, in particular to defendant Kushiner
14 and defendant Cerda and Esquivel in terms of the radio
15 communication that they did testify to.

16 THE COURT: I want your record -- your objection to be
17 clear on the record. I don't quite understand it, and I just
18 want --

19 MS. PINKSTON: Sure.

20 THE COURT: -- to make sure my ruling is clear too.

21 MS. PINKSTON: So my understanding is that one of the
22 issues is that this is seven-year-old radio, radio dispatch
23 communications. And what they didn't recall in 2013, they
24 conceptually are likely not to recall now another four years
25 later. Is that correct?

1 THE COURT: Yes, although I acknowledge that you can
2 refresh a recollection with anything at any time. So I'm not
3 saying it is conceptually impossible, but at this point
4 unlikely.

5 MS. PINKSTON: So for the few defendants that were
6 able to articulate with particularity in 2013 about what they
7 recall hearing three years earlier in 2010 on the radio, I
8 believe it is prejudicial for them not to have the jury hear
9 what they heard at that day because they are being penalized
10 for not recalling specifics of radio communication three years
11 later, which doesn't seem to be reasonable regarding the human
12 mind.

13 THE COURT: That's fair. And I'm not saying that the
14 jury cannot hear what they remember hearing that day. What I
15 am saying is the jury cannot hear the radio transmission.

16 So, in other words, the officer is certainly free to
17 continue to say, I remember hearing this on the radio, and that
18 is certainly going to be allowed as state of mind. I can't
19 advise in advance. But generally seems to be state of mind
20 exception to hear.

21 I'm simply saying the transmission themselves being
22 played at trial, I'm not letting in. But your objection is
23 noted for the record.

24 MS. PINKSTON: Thank you.

25 THE COURT: Okay. Next is the objections regarding

1 financial conditions.

2 Are the plaintiffs continuing to seek punitive
3 damages?

4 MS. DYM KAR: Yes.

5 THE COURT: All right. And defendants -- the
6 plaintiffs note that Judge Brown, because they are talking
7 about a ruling from 2015, they believe have conflated --
8 plaintiffs believe that Judge Brown conflated evidence on
9 punitive damages, their financial condition, with
10 indemnification from the city.

11 Is that correct?

12 MS. DYM KAR: That's right. When she ruled on one
13 issue, the other one got thrown in. And I don't know that it
14 was a logical jump to make, that we wouldn't get discovery on
15 finances.

16 THE COURT: So the stipulation regarding the city
17 within the scope is one thing.

18 Where does the city stand on indemnification?

19 MS. PINKSTON: Indemnification of compensatory damages
20 is not going to be disputed. And obviously Illinois law
21 prohibits the City of Chicago from indemnifying on punitive
22 damages. So the City of Chicago would not be indemnifying on
23 punitive damages.

24 THE COURT: All right. And do you want the jury to
25 know that the city is indemnifying the officers on compensatory

1 but not punitive?

2 Who represents the city?

3 MS. PINKSTON: We do. We all now do.

4 THE COURT: Okay.

5 MS. PINKSTON: It used to be separate because there
6 was a Monell claim.

7 THE COURT: Okay. All right. So one of the issues in
8 these type of cases is whether you want the jury to know how
9 indemnification works. So I am open to instructing the jury
10 that the city indemnifies the officers as to compensatory
11 damages, but does not indemnify the officers as to punitive
12 damages.

13 I'm open to considering that if that's what you want
14 instructed. But if that's what you want instructed, that also
15 informs some of the issues here that Ms. Dymkar is raising.

16 MS. PINKSTON: We do not want that instruction, your
17 Honor.

18 THE COURT: All right. So that leaves your clients
19 open to the possibility that the jury may say the award as to
20 the defendants for compensatory damages isn't that bad. But
21 punitive damages, to teach these officers a lesson, we're going
22 to make that large.

23 So compensatory damages we'll say \$25,000 across the
24 board. Punitive damages we'll say \$100,000 across the board.
25 And the jury will not know that that division, the hundred

1 thousand, will be paid by the officers.

2 MS. PINKSTON: That's true.

3 THE COURT: And I just want to make sure when you
4 think through this issue that that's what you -- you don't want
5 the jury to know otherwise. Because a jury -- the only reason
6 I'm raising this is a jury may say, we think these people were
7 handled -- were treated unfairly so we want to award them. And
8 we're going to be reasonable because compensatory isn't that
9 big of a deal. You know, I'm not trying to minimize your
10 clients's claim. Compensatory isn't that big of a deal, but
11 the punishment that the city needs to know they can't let this
12 happen again, so we're going to dump on the punitives, not
13 realizing that that's not going to matter one bit to the city
14 since they don't have to pay it. And that's why --

15 MS. PINKSTON: I understand what you are saying.

16 THE COURT: -- I raise this issue in these type of
17 cases as to -- if you want that instruction or not.

18 MS. PINKSTON: Your Honor, honest --

19 THE COURT: Do you want time to think about it?

20 MS. PINKSTON: That's what I was just going to ask
21 you. Honestly given how you just presented the issue, I don't
22 think that we should make that decision without first talking
23 to our clients, and we will do so immediately.

24 THE COURT: Okay.

25 Ms. Dymkar, do you want to say anything further on

1 that?

2 MS. DYM KAR: I do because I'm a little bit confused
3 because I think the indemnification instruction is mandatory if
4 the defendants seek to assert financial hardship. That's what
5 was briefed in our motion in limine for Judge Brown. If they
6 assert financial hardship, their financial circumstances, then
7 the jury must be instructed that the city will indemnify the
8 plaintiffs.

9 So I guess I'm getting a little confused because
10 you're coming at it in the converse.

11 THE COURT: Well, the jury -- the jury, if there is an
12 instruction on indemnification, and that the city indemnifies
13 the officers as to compensatory damages but will not indemnify
14 the officers as to punitive damages, then the financial --
15 their financial hardship or ability to pay is relevant, but it
16 is confined to the punitive damages.

17 If that instruction isn't provided, then as far as
18 your issue with the financial background of the officers, if
19 that is presented, the jury may not understand that it is only
20 as to punitive damages that it matters.

21 MS. DYM KAR: Right. And that's why indemnification is
22 -- instruction is mandatory in that circumstance.

23 THE COURT: If they're presenting financial hardship.

24 MS. DYM KAR: Right.

25 THE COURT: Right now they seem to be saying that's

1 your whole issue is they haven't presented me with evidence to
2 support financial hardship. Right?

3 MS. DYM KAR: We're saying they never gave us
4 discovery. But apparently some or all of the defendants still
5 want to put forth their financial circumstances.

6 THE COURT: Right, and you're saying that's not fair.

7 MS. DYM KAR: That's not fair, correct.

8 THE COURT: Right. So, one, I need to find out where
9 the city is on this. Are they going to assert financial
10 hardship? And, if so, in what context? Because if they don't
11 want to talk about indemnification at all, and they don't want
12 to offer any financial hardship, and they're precluded from
13 offering financial hardship, that's a situation they should
14 fully evaluate.

15 Now if the city -- depending on where the city comes
16 out, where are you on financial hardship as to punitive
17 damages? Because we all, as you said, Ms. Pinkston, we all at
18 this table know the punitive damages are not going to be paid
19 by the City.

20 MS. PINKSTON: Correct.

21 THE COURT: And the jury may -- depending on where you
22 are and where Ms. Dymkar is, the jury may or may not know that.

23 But I'm not sure how we got here. Obviously 2015 was
24 before I got here. So there was no discovery allowed on
25 financial circumstances of the officers.

1 MS. PINKSTON: So some -- at this point in time, of
2 the remaining defendants, and we're -- we've now asked
3 plaintiffs's counsel to voluntarily dismiss two additional
4 defendants.

5 THE COURT: Are you doing that?

6 MS. DYM KAR: We're going to be, as we told counsel
7 before you came out, we're going to be evaluating the whole
8 case to see if there are ways to streamline the case. I'm not
9 prepared to do that today.

10 THE COURT: That's fine.

11 MS. DYM KAR: Definitely before the pretrial
12 conference.

13 THE COURT: Okay. Go ahead.

14 MS. PINKSTON: So with that in mind, that's actually,
15 in our position, how we reached this. Because we anticipated
16 that following cross summary judgment motions we would have far
17 less clients going to trial than we do.

18 THE COURT: Uh-huh.

19 MS. PINKSTON: At this point in time we have reached
20 out to all of our clients. The -- there is not a unanimous
21 decision in terms of that. Some clients do want to assert a
22 financial condition defense, and that's why when you proposed
23 the -- the instructions the way that you presented it, I think
24 there needs to be a second discussion with them.

25 THE COURT: Yeah. I mean -- okay.

1 MS. PINKSTON: Because I think that affects the
2 overall defense versus an individual basis.

3 THE COURT: Right. If your clients all agree they
4 want a financial hardship, they want to present financial
5 hardship as a defense or at least a -- you know, a shield of
6 sorts to punitive damages, let's just presume we go down that
7 road or if that's what you decide and plaintiffs are good with,
8 whatever, how are we going to remedy this lack of discovery?

9 MS. PINKSTON: In my response I stated that financial
10 affidavits would be provided on or before the pretrial
11 conference of next week. And that was my thought as to how to
12 remedy the situation. Because those would be sworn affidavits
13 as to their current financial condition going before trial.

14 THE COURT: And what's your view on that, Ms. Dymkar?

15 MS. DYM KAR: I'm not sure what it will look like
16 coming from these particular attorneys. I have seen those
17 types of affidavits before. And sometimes there really isn't
18 much in there. And it may be, I don't know how much I made
19 last year because my wife did the taxes. It will be something
20 like that. And then we're at a point where we are a week
21 before trial, and we can't really look into anything.

22 Where it seems to be deficient usually is in the
23 assets. Officers will say, I have this credit card debt, I
24 have this mortgage, I owe this money on my boat or whatever.
25 But when it comes to the assets, sometimes we're not -- we

1 don't get the full picture of what their income is.

2 And it takes usually about ten or 20 minutes at a
3 deposition to ask these questions. That's what's kind of
4 frustrating. And, you know, not knowing ahead of time what
5 this affidavit is going to look like, I have a hard time
6 agreeing to it.

7 Maybe it will be a very thorough affidavit, and it
8 will include everything. But it is kind of putting all our
9 eggs in one basket a week before trial.

10 MS. PINKSTON: I mean, it certainly won't say, I don't
11 know what my income is because my wife does -- they can't swear
12 to that. They would have to talk with their wife and get the
13 information to include in the affidavit.

14 THE COURT: Yeah. I think -- okay.

15 MS. DYM KAR: We did make -- I'm sorry, I might have
16 interrupted you.

17 THE COURT: No.

18 MS. DYM KAR: We did make that -- we did have a request
19 to produce that listed all the, you know, outside income, your
20 business, your real estate, and your -- and maybe that's
21 something we should pull out and just say, that's what the
22 affidavit has to include, your compensation, your -- you know,
23 it is very detailed what we asked you to produce.

24 MS. PINKSTON: Yeah. So that's I believe how it first
25 began because it was date of birth, bank account numbers,

1 Social Security numbers, that's what happened at the
2 depositions as well, which led to this prohibition prior to
3 trial on discovery of the financial condition.

4 So with that in mind, we certainly could use that as a
5 reference. I will say, however, to the extent that that
6 affidavit -- that production request did request those very
7 personal account numbers, Social Security numbers, that sort of
8 thing, I don't think that would be appropriate to include in a
9 financial affidavit.

10 MS. DYM KAR: I don't recall asking for any of that.

11 MS. PINKSTON: All right. The Social Security numbers
12 were definitely asked at the deposition.

13 MS. DYM KAR: Our request to produce has assets and,
14 you know, amounts -- the value of the assets. I have made
15 reference to it in our motion. I attached it as an --

16 MS. PINKSTON: I haven't looked at the request for
17 production in some point --

18 MS. DYM KAR: Okay.

19 MS. PINKSTON: But what I am -- that's all I'm saying
20 is that I think that's a fair -- a fair point in terms of
21 drafting the affidavit. And my only concern would be any of
22 that personal information that would present a security risk.
23 That's all.

24 THE COURT: Well, that -- yeah. Okay. We're going to
25 table resolution of this issue to the pretrial conference. I

1 am concerned -- I mean, I think -- I would think everyone
2 agrees with Ms. Pinkston that Social Security numbers and dates
3 of birth and, you know, bank account numbers, even though those
4 are on our checks, but that type of account information which
5 the civil rules and criminal rules treat as confidential are
6 not germane in any meaningful way for -- certainly for a jury.

7 I am concerned of Ms. Dymkar's ability to test the
8 representations made in the affidavit at this late date. So I
9 would encourage defendants because, you know, if Ms. Dymkar is
10 in agreement that the affidavits are sufficient, and, you know,
11 I'll allow the -- she won't have an objection to presenting a
12 financial hardship defense or we'll call it defense, but that
13 solves the answer --

14 MS. PINKSTON: Uh-huh.

15 THE COURT: -- depending on where the city comes out
16 on this.

17 If Ms. Dymkar says this is not sufficient, and then I
18 have got to resolve it, you know, it -- there is a certain
19 level of unfairness that the city back when -- I know no one
20 here was involved then -- but said don't answer these
21 questions. And now we're inheriting, you know, a situation
22 where on the eve of trial we're wishing, I wish I hadn't done
23 that. I wish I had let them just say like the rest of us, I
24 got a house worth 250 and the mortgage is 220, and I have got
25 three kids, and, you know, on a good year we go to Disneyworld.

1 That's my life.

2 MS. PINKSTON: Absolute -- yes, your Honor.

3 THE COURT: But that's not what happened. And that it
4 happened Ms. Dymkar wouldn't have, you know, a basis to object
5 now.

6 So I would just think about that.

7 MS. PINKSTON: Yes, your Honor.

8 THE COURT: All right. So we have taken care of Zone
9 12. We have taken care of the motions in limine. The recently
10 filed motions in limine.

11 I think the only issue left is the show-up, and I
12 apologize because that did not get on my list. I will have a
13 ruling on that by -- you will see an ECF Tuesday by close of
14 business.

15 And the issue there is whether -- who testified the
16 show-up happened, the -- what's the main witness's name again,
17 Mr. --

18 MS. O'MALLEY: Thorton.

19 THE COURT: Thorton. He indicated there is a show-up,
20 correct?

21 MS. O'MALLEY: Correct.

22 THE COURT: And one of the defendants --

23 MS. PINKSTON: Esquivel also recalls the gentleman
24 witness who identified David Wilbon being in the back of the
25 police car. So he doesn't see him drive past, he sees him in

1 -- still in the police car explaining who the individuals are.

2 THE COURT: Okay. And then Mr. Wilbon says --

3 MS. PINKSTON: Correct.

4 THE COURT: -- the show-up happened.

5 MS. PINKSTON: David Wilbon.

6 MS. DYM KAR: He says -- doesn't say there was a car
7 that went by. There was not a male and female officer. There
8 was a car down the street. And the -- Thorton was talking to a
9 couple of -- I mean, the facts are somewhat -- are somewhat
10 different than --

11 THE COURT: Right.

12 MS. PINKSTON: Defendants disagree with that. But we
13 provided the citations the last time.

14 THE COURT: Yeah. I remember, yeah.

15 MS. PINKSTON: The only thing that I would like to
16 add, your Honor, is with regard to -- I understood your -- the
17 situation last time to be how -- was the officer -- were the
18 officers relying upon this information, the show-up. Whether
19 Keith Thorton's testimony, deposition testimony, could include
20 this information about his perception of the show-up.

21 In addition to Officer Esquivel, which I don't know --
22 believe -- I don't know if I gave you the citations the last
23 time.

24 THE COURT: Okay.

25 MS. PINKSTON: So 58, line 5 through 59, line 3.

1 59, line 16 through 60, line 20.

2 61, line 16 through 62, line 3.

3 65, line 12 through line 21.

4 66, line 15 through line 17.

5 68, line 15 through 70, line 17.

6 72, line 12 through 73, line 4.

7 THE COURT: I'm sorry, 73, 4?

8 MS. PINKSTON: Yes.

9 84, line 24 through 85, line 2.

10 91, line 22 through 92, line 1.

11 THE COURT: I'm sorry. Give me that last set again.

12 MS. PINKSTON: Sorry. 91, line 22 through 92, line 1.

13 THE COURT: Okay.

14 MS. PINKSTON: And then additionally defendants would
15 also just argue for the record that Officer Valentin's
16 deposition relies heavily on what Officer Esquivel told him.

17 THE COURT: Okay.

18 MS. PINKSTON: So then that makes the show-up even
19 more relevant to Officer Valentin.

20 THE COURT: Yeah. And I'll look at this again. I
21 recall at the last hearing my question was one of what
22 foundation do you need to make that the event happened for it
23 to be used as state of mind exception for hearsay purposes.

24 And I was in my head thinking kind of like a Santiago
25 proffer for conspiracy statements. In the criminal context you

1 need to make an initial showing that there is a semblance of a
2 conspiracy to allow the statements in furtherance of the
3 conspiracy to come in at trial. So that makes complete sense
4 in a large conspiracy case.

5 But I -- I'll look at this further. I think I have
6 satisfied myself as to the legal concern though. But I will
7 look at this further.

8 Go ahead, Ms. Dymkar.

9 MS. DYM KAR: If I could be heard.

10 THE COURT: Ms. Dymkar, you can always be heard.

11 (Laughter.)

12 MS. DYM KAR: The decision that came out of the summary
13 judgment motions I still find confusing as to what claims got
14 left and what defendants got left, but --

15 THE COURT: That's Judge Aspen's decision.

16 MS. DYM KAR: That's Judge Aspen's decision.

17 But in trying to make sense of it, he did leave only
18 four officers potentially liable for the arrest of David
19 Wilbon, Rico Wilbon, and George Smith.

20 And I think for David Wilbon it is only three
21 officers.

22 THE COURT: Okay.

23 MS. DYM KAR: And so to the extent that we're talking
24 about false arrest claims, it would be their state of mind. So
25 if Esquivel is talking to Valentin, but no one communicates to

1 McDermott, Kushiner, Silva, and Garcia, then that does not
2 become part of their state of mind, analysis of their state of
3 mind.

4 THE COURT: Yeah, so this -- I know you had this in
5 your motion regarding the -- what was the issue we were just
6 reviewing?

7 MS. DYM KAR: Limiting their testimony regarding the
8 events of 1500 North Menard.

9 THE COURT: Yeah. So you're saying because the
10 officers that Ms. Pinkston's directing me to aren't -- don't
11 only have liability exposure here, there is a problem.

12 MS. PINKSTON: I don't believe that's correct though.
13 I think that the --

14 THE COURT: Then tell me.

15 MS. PINKSTON: I don't think that all of those
16 officers were dismissed pursuant to the false arrest claim for
17 Rico Wilbon.

18 MS. DYM KAR: I looked at it again. I might be wrong.

19 MS. PINKSTON: I -- I apologize. If I had known we
20 were going to raise this issue --

21 THE COURT: That's all right.

22 MS. PINKSTON: I did actually just recently make --

23 THE COURT: A chart.

24 MS. PINKSTON: -- a chart as to which ones were still
25 remaining. And I agree that the officer -- the number of

1 officers for David Wilbon's false arrest claim is very limited.

2 But as to the unlawful search, the malicious
3 prosecution claims, and, I believe, the other remaining false
4 arrest claims, they are not as limited. It is mainly Plovovich
5 and Millan who were the 25th District officers who came later
6 in time that were dismissed from those claims. And then the
7 other remaining officers were still on.

8 But, even still, if Ms. Dymkar was correct that all of
9 these officers were -- that Esquivel, for example, was
10 dismissed pursuant to false arrest claim, and I don't -- all
11 the false arrest claims, and I don't think that he was, it
12 still is going to be relevant as -- his knowledge is going to
13 be relevant as to the unlawful search claims and the malicious
14 prosecution claims primarily because of the probable cause for
15 the charge of mob action, which is an element of malicious
16 prosecution.

17 THE COURT: Right. Who arrested Mr. David Wilbon and
18 Mr. Rico Wilbon? I mean, if they have -- if there are false
19 arrest claims against some, but not all of the defendants,
20 which defendants arrested these guys?

21 MS. DYM KAR: I'm not sure. Are you saying what did
22 Judge Aspen decide? Judge Aspen decided that Lieutenant
23 McDermott, Officer Kushiner, and Silva were potentially liable
24 for the arrest of David Wilbon.

25 And McDermott, Kushiner, Silva, and Garcia were

1 potentially liable to the arrest of David Wilbon.

2 Oh, wait a minute. Wait a minute. This is just -- I
3 just -- if I just read my own writing here or my typing here.
4 The Court ruled that only Lieutenant McDermott and Officers
5 Kushiner and Silva were potentially liable for the arrest of
6 David Wilbon for aggravated assault of a police officer.

7 And that McDermott, Kushiner, Silva, and Garcia were
8 potentially liable for the arrest of the three plaintiffs,
9 David, Rico, and George Smith for mob action.

10 So there is four officers for mob action for the three
11 plaintiffs, and three officers for aggravated assault on David
12 Wilbon.

13 MS. PINKSTON: But does that -- are you reading from
14 his first order or from the order on your motion for
15 reconsideration? Because there was a -- there was an error in
16 the first order on the motion for summary judgment that the
17 Court recognized and addressed in an oral proceeding.

18 And then the next reconsideration -- the order on the
19 reconsid- -- the order on the motion for reconsideration solved
20 all of that.

21 I -- if we could table this because, honestly, I -- I
22 don't have it fresh in my mind to --

23 THE COURT: That's fine.

24 MS. PINKSTON: -- rattle off. But I do you agree that
25 there are different officers on each one. I can -- with the

1 same with the chronology, I would be happy to send, you know, a
2 statement from defendants's position as to what defendants
3 remain on each claim.

4 THE COURT: I think that would be good to do as a
5 joint venture, as opposed to each side sending their own.
6 Because if we can't even get that straightened out --

7 MS. PINKSTON: Yes.

8 THE COURT: -- at this late date --

9 MS. PINKSTON: It will be a very difficult verdict
10 form.

11 THE COURT: Yeah.

12 MS. DYM KAR: Well, I remember spending much time,
13 that's when I first made it, and I first made the chart, was to
14 do the verdict form, which is Exhibit I to the pretrial order,
15 and I believe that correctly lists who is potentially liable
16 for what claim.

17 MS. PINKSTON: Did you bring that with you?

18 MS. O'MALLEY: I have it.

19 MS. DYM KAR: Exhibit I to the pretrial order.

20 But it also makes for a pretrial order that continues
21 for pages and --

22 THE COURT: A jury verdict form you mean.

23 MS. DYM KAR: Yeah, I'm sorry. Pretrial -- the jury
24 verdict form.

25 MS. PINKSTON: Yeah. So I believe the false

1 arrest -- I would double check it, but I think the false arrest
2 is correct on plaintiffs's verdict form in terms of the
3 remaining defendants. And -- but as to the legal search, it is
4 everyone, other than Plovanich and Millan.

5 And then with the malicious prosecution for the mob
6 action, it is everyone, again, except for Plovanich and Millan.

7 So I think that in this particular situation, it
8 absolutely is relevant what each of these officers knew in
9 terms of a show-up or a line-up.

10 THE COURT: All right. Where are Plovanich and
11 Millan? Are they still in the case?

12 MS. PINKSTON: They are.

13 THE COURT: For what?

14 MS. PINKSTON: They are on for malicious prosecution
15 of aggravated assault to a police officer against David Wilbon.

16 THE COURT: Okay. Can you send in a chart?

17 MS. PINKSTON: Yes.

18 THE COURT: And we got down here, because the issue
19 was collective knowledge as to the show-up and whether the two
20 officers who recall Valentin and Esquivel --

21 MS. PINKSTON: Valentin recalls what Esquivel told
22 him.

23 THE COURT: Okay. So Esquivel says, I remember the
24 show-up, and this is what I remember. And Valentin says, I
25 talked to -- I'll look at this. But Valentin says Esquivel

1 told me this stuff.

2 MS. PINKSTON: Right.

3 THE COURT: And is there any connection between that
4 information and any of the officers who are involved with the
5 -- David Wilbon's malicious prosecution claim who say that's
6 what Esquivel or Valentin told me?

7 MS. PINKSTON: With the only connection --

8 THE COURT: It's actually a collective knowledge issue
9 I'm trying to get.

10 MS. PINKSTON: So that's where the recollection fails
11 other officers. When they say, I learned this information from
12 another officer. Who was that? I don't recall at this point.

13 So whether it was Esquivel or Valentin for those other
14 officers, we do not know.

15 Kushiner, however, has his own interaction with Keith
16 Thorton as does Lieutenant McDermott.

17 Garcia and Silva have -- I don't want to misspeak as
18 to them, your Honor. I'm sorry.

19 THE COURT: Okay. No, that's all right.

20 All right. I will get something out by close of
21 business Tuesday. So it may -- my thought is that it is going
22 to be more instructive as to the general principle. Not that
23 it needs to be proven by some standard that the show-up
24 happened, but that may not answer who can testify about the
25 show-up because they're going to need to be able to say, I do

1 remember being told that.

2 But I will drill down a bit on the show-up itself and
3 the concerns you raised last time, Ms. Dymkar.

4 All right. Anything else that we can get done today?

5 MS. DYM KAR: I don't think so.

6 THE COURT: All right.

7 MS. PINKSTON: I don't think so.

8 THE COURT: Okay. Thank you for sending the chart as
9 soon as possible.

10 And then your separate submissions on the other issue,
11 I would appreciate getting those as well.

12 MS. PINKSTON: Thank you, your Honor.

13 THE COURT: Have a good long weekend.

14 MS. PINKSTON: You too.

15 MS. DYM KAR: Thank you.

16 (Which concluded the proceedings:)

17 CERTIFICATE

18 I HEREBY CERTIFY that the foregoing is a true, correct
19 and complete transcript of the proceedings had at the hearing
20 of the aforementioned cause on the day and date hereof.

21
22 /s/ **Pamela S. Warren**
Official Court Reporter
23 United States District Court
Northern District of Illinois
24 Eastern Division
25

September 18, 2017
Date